projecting into the road. As a result, on the plaintiff's story, he was unable to see the lorry until he came to the front of the vehicle parked on his near side, that is to say, about 10 ft. or 12 ft. from the lorry. The lorry driver's evidence was that he had halted and taken all the necessary precautions, but that was disbelieved by the learned judge.

How far the learned judge believed the details of the plaintiff's account is uncertain. The plaintiff said that he was travelling at 16 miles per hour, and as he was unable to pull up in time to avoid running into the lorry, he swerved to his right and accelerated. The learned judge took the view that if the plaintiff was going at the speed he said, and if he was keeping a proper lookout, it was still very negligent of him to attempt the manoeuvre of going in front of the lorry, and it was extremely dangerous.

He then discussed that matter in more detail, and formed the view that owing to the shortness of distance which the plaintiff had in which to pull up he would probably have collided with the lorry in any event, but he formed the view that had the lorry gone on, and had the plaintiff braked, he would have had adequate room to pass behind the lorry, no doubt swerving as much as was necessary.

The learned judge discounted the agony of the moment which was put forward by counsel, on the ground that it was not the defendant but the stationary van which had created the emergency. He then went on to say: ". . . it is a practical impossibility to apportion the proportions of culpability which are the cause of the accident, and I have come to the conclusion that the proper award would be that the plaintiff contributed 50 per cent. towards the damage which he sustained".

In the Court of Appeal the learned Lord President said: "It is not for this court to substitute its own views as to what happened in a case of this sort which depends so much on credibility for those of the trial judge but I find comfort in the consideration that my own views do on the whole coincide with the trial judge's conclusions. On the whole the evidence, to put it at the lowest, suggests that the motor cyclist was keeping a less than adequate lookout". He then gave some reasons for this view, and pointed out that if the plaintiff had wished to go in front of the lorry he had not only a broad road on which to execute this manoeuvre, but he had a road coming in at 45 degrees on the right up which he might have gone as an escape route.

Leaving aside the question whether the learned Lord President's view of that possibility should be adopted, the fact remains that the learned judge, having heard the witnesses, came to the conclusion that the plaintiff was 50 per cent. to blame. He took the view that had he pursued what one might describe as the normal course in such an emergency, namely that of applying his brakes and seeing whether he could go behind the lorry, there would have been room for him to do so.

This is purely a question of deciding what is the right apportionment, if any, of blame on two persons when they are suddenly involved in a traffic emergency. In their Lordships' view it would not be possible for this court to intervene and substitute a fresh finding instead of that which was found by the learned trial judge. Their Lordships will therefore report to the Head of Malaysia that the appeal should be dismissed with costs.

Appeal dismissed.

Solicitors: *Lipton & Jefferies; Stanley & Co.*

RAVAMANICKAM v. PUBLIC PROSECUTOR

[F.C. (Thomson L.P., Ong Hock Thye F.J. and Ismail Khan J.) August 19, 1965]

[K.L. — Federal Court Criminal Appeal No. 29 of 1965]

Criminal law and procedure — Trial — Unsworn evidence of child — Corroboration — Need for adequate direction to jury.

Penal Code, ss. 302 & 304 — Murder — Conviction for culpable homicide not amounting to murder — Direction to jury on corroboration.

The appellant was convicted of culpable homicide not amounting to murder. The only direct evidence against the appellant was the unsworn evidence of a boy of eight years old, the son of the deceased woman. In his direction to the jury the trial judge said: "The general rule is that the unsworn evidence of a child must not be accepted unless it is corroborated on some material points by independent evidence". On appeal,

Held: the direction did not go far enough. The rule as to corroboration is a living part of the law and it is not sufficient merely to state the bare rule to the jury. It must be stated and illuminated in such a way that it will be a vital factor in the consideration by them of the issues before them.

Cases referred to:—

(1) *Chao Chong & Ors.* v. *Public Prosecutor* [1960] M.L.J. 238, 240.

(2) *Mohamed Sugal Esa* v. *The King* A.I.R. 1946 P.C. 3, 6.

FEDERAL COURT.

R. Ponnudurai for the appellant.

Syed Hassan Aljaffri (Deputy Public Prosecutor) for the respondent.

Thomson L.P. (delivering oral judgment): This appellant was prosecuted for the murder of a woman named Mailomba in contravention of section 302 of the Penal Code. In the event he was found not guilty of that offence but was

convicted for culpable homicide not amounting to murder in contravention of section 304.

It has never been in question that the dead woman was stabbed in some sort of fight that took place on the night of 4th October last year in Klang Road, Kuala Lumpur. The only question really in issue at the trial was whether the hand which stabbed her was that of the appellant or someone else. Once that question was decided unfavourably to the appellant the question of whether what was done amounted to murder or culpable homicide not amounting to murder had, of course, to be considered, but at this stage we are not concerned with that issue.

The only direct evidence against the appellant was the unsworn evidence of a boy of eight years of age, a son of the deceased woman. The prosecution relied for corroboration of the boy's evidence on the evidence of two witnesses who saw the appellant near the scene at the material time.

The defence was one of *alibi*.

It is not necessary for this court at this stage to discuss the evidence in detail. It will suffice to observe, and this has never been seriously contested, that it was not very strong and in the circumstances it was particularly necessary that the jury should receive adequate directions regarding it. In particular it was necessary that they should receive a full and adequate direction on the subject of the corroboration which was, to put it at the lowest, desirable of the boy's evidence.

What the judge said on that point is this:—

"The general rule is that the unsworn evidence of a child must not be accepted unless it is corroborated on some material points by independent evidence."

Now that so far as it goes is correct. In our view, however, it does not go far enough and here I would quote a passage from the judgment of this court in the case of *Chao Chong & Ors.* v. *The Public Prosecutor*:—[1]

"One reason why children's evidence is regarded with suspicion is that there is always the danger that a child may not fully understand the effect of taking an oath. In this country where evidence is taken on affirmation that consideration loses much of its force. Another reason, however, which in this country possesses undiminished force is that it is a matter of common knowledge that children at times find it difficult to distinguish between reality and fantasy. They find it difficult after a lapse of time to distinguish between the results of observation and the results of imagination. In our view (we were speaking there in relation to the case before us) something of the sort should have been put to the jury. At the very lowest they should have been invited to consider their own experience in connection with stories told by children. It was not sufficient merely to observe that there is a risk in acting on the uncorroborated evidence of a child. In any event we have grave doubts as to whether even so far as it goes that observation is strong enough. As was said by Lord Goddard in the case of *Mohamed Sugal Esa* v. *The King*:—[2]

'It is a sound rule in practice not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law.'

Had the jury been directed as fully as we think they should have been on these points it is quite impossible to say with certainty that the appellants would have been convicted."

And we went on in that case to quash the convictions with which we were concerned.

In our view these observations are applicable to the present case. After all the rule as to corroboration is a living part of the law and it is not sufficient merely to state the bare rule to a jury. It must be stated and illuminated in such a way that it will be a vital factor in the consideration by them of the issues before them.

In the circumstances we have no option but to quash the conviction in the case.

Conviction quashed.

Solicitors: *Rajendra & Teik Ee.*

IN RE NEOH BEAN CHYE

[A.Cr.J. (Ong Hock Sim J.) August 27, 1965]

[Penang — Criminal Revision No. 5 of 1965]

Criminal law and procedure — Trial — Sentence — Juvenile offender — Desirability of calling for probation officer's report.

The accused had been convicted of robbery and was sentenced to five years imprisonment. The accused had two previous convictions, one in 1961 for possession of ganja and the other in 1964 for housebreaking by night. It appeared that the offence of possession of ganja for which the accused was committed for four years to the Henry Gurney School was committed by the accused when he was 17 years old and the ganja was worth $5.

Held: if the learned president in this case had been aware of the facts concerning the previous conviction in 1961 and also that in the case in 1964, nothing was stolen, he would not have taken such a serious view; therefore the sentence of five years imprisonment should be reduced to eighteen months imprisonment.

Cases referred to:—

(1) *Tukiran bin Taib* v. *Public Prosecutor* [1955] M.L.J. 24.

(2) *Teh Yew Whatt* v. *Public Prosecutor* [1958] M.L.J. 171.

CRIMINAL REVISION.

Wan Ismail bin Wan Mohamed Salleh (Deputy Public Prosecutor) for Public Prosecutor.

Accused in person.

Ong Hock Sim J.: Section 37 of the Courts of Judicature Act, 1964, requires a subordinate court passing sentence in exercise of the special powers of punishment conferred by subsection (2) of section 64 or by subsection (2) of section 87 (as the case may be) of the Courts Ordinance, 1948, where no appeal has been lodged against